

REMARKS

Claims 22-52 are pending in this application. Claims 34-38 are allowed and claims 29, 47-52 are objected to but indicated as allowable if rewritten in independent form. Claim 49 depends from claim 34 and should also be allowed.

Applicant is not able to prepare a proper response to the Office Action because the Office Action contains numerous errors and is incomplete. The errors and omissions in the Office Action are the same, or similar, errors and omissions included in the June 25, 2010, Office Action and the December 30, 2009, Office Action. Applicant filed the September 16, 2010, Pre-Appeal Brief Request for Review in hopes that the Review Panel would require Examiner Campbell to issue an Office Action that complies with 37 CFR 1.104(c)(2). The Review Panel did reopen examination, but, as stated above the pending Office Action is just the latest in a line of Office Actions that do not comply with 37 CFR 1.104(c)(2) and includes multiple errors and omissions. Such improper Office Actions have done nothing to advance prosecution and have forced Applicant to waste time and money preparing responses that should not have been necessary.

Applicant requests that a proper, non-final Office Action be issued so that prosecution can be advanced, or at least so that the issues in this application can be placed in proper form for appeal.

To understand the errors and omissions in the current Office Action, one only has to look back at Applicant's previous responses, including its Statement of Arguments filed September 16, 2010. However, the following is a list of the errors and omission in the current Office Action:

- The Response to Amendment section of the Office Action states that the March 29, 2010, Amendment B introduced new matter. As stated on page 13 of Amendment B, support for this amendment is found in Figure 4. Examiner Campbell made no mention of Figure 4 or any other asserted support.
- The claim language used in the Office Action is incorrect for claims 32, 39, 23, 27, 31, 41, 42 and 45.

- For most of the rejections, there continues to be no explanation as to how the applied references teach or suggest the claim features. In the few cases where explanation is provided, it is insufficient. Applicant submits that the Office Action is not in compliance with 37 CFR 1.104(c)(2).
- Claim 49 depends from allowed claim 34 and should, therefore, be allowed. Claim 49 is indicated as allowable if rewritten in independent form. This error continues even though Examiner Campbell indicated in a July 27, 2010, voice mail message that claim 49 is allowable.

Applicant submits that it should not be forced to waste further time and money preparing yet another response to yet another improper Office Action. Especially when doing so will, if past practices are repeated, only result in another Office Action that fails to advance prosecution.

Applicant considered appealing the current Office Action, but it fears that doing so would only result in the Board reopening prosecution and demanding a proper office action. This would result in even more time and money being wasted. Applicant hopes that this can be avoided by the issuance of a proper Office Action that can be either responded to or appealed.

CONCLUSION

In view of the above, Applicant requests a proper non-final Office Action that is in conformance with 37 CFR 1.104(c)(2) and that addresses the correct claim language.

Respectfully submitted,

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May 9, 2011

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